

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MICHAEL E. WILSON
Claimant

VS.

CITY OF OTTAWA
Respondent
Self-Insured

)
)
)
)
)
)
)

Docket Nos. 187,549
and 190,100

ORDER

Respondent appeals from a May 1, 1995 Order by Administrative Law Judge Alvin E. Witwer granting claimant's request for temporary total disability and medical benefits.

ISSUES

Respondent asks the Appeals Board to review the finding by the Administrative Law Judge that claimant's injury arose out of and in the course of his employment. Respondent acknowledges an initial work-related injury, but contends that a subsequent, non-compensable injury at home resulted in the current disability and need for medical benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the evidence of the parties, the Appeals Board finds that the May 1, 1995 Preliminary Order should be affirmed.

There is little, if any, dispute about the facts in this case. Claimant injured his back while working for the City of Ottawa, first, on December 1, 1993, and again on May 22, 1994. After the second injury, Dr. MacGee performed surgery. Dr. MacGee released claimant to return to work February 21, 1995, with a twenty-five (25) pound lifting

restriction. Before claimant actually returned to work, however, he developed an upper respiratory infection. On February 7, 1995, a sneeze at home precipitated increased symptoms which caused him to be seen in the emergency room. Dr. MacGee then performed additional tests and found a recurring herniated disc at the same level. Dr. MacGee recommended and performed an additional surgery in April 1995.

Claimant remained in the hospital at the time of the present preliminary hearing. The deposition of Dr. MacGee was presented for consideration by the Administrative Law Judge. Dr. MacGee testified, among other things, that the sneeze caused an additional rupture of the disc because the original rupture had not healed or the disc was weaker because of the previous rupture. He also described the additional rupture as an anticipated consequence of the original injury and surgery. Based upon the record and the testimony of Dr. MacGee, the Appeals Board finds the additional injury caused from the sneeze was a natural and probable consequence of the original injury and, therefore, compensable.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the May 1, 1995 Preliminary Order of Administrative Law Judge Alvin E. Witwer should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Gary L. Jordan, Ottawa, Kansas
Mary O. Thompson, Kansas City, Missouri
Alvin E. Witwer, Administrative Law Judge
David A. Shufelt, Acting Director